Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Tariff Filing Requirements for Nondominant Common Carriers	)	CC Docket No. 93-36

COMMENTS OF THE INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

The Information Technology Association of America ("ITAA"), by its attorneys, hereby submits the following comments in response to the Notice of Proposed Rulemaking ("Notice") which the Commission issued in the above-captioned proceeding on February 19, 1993.[1]

I. INTRODUCTION AND SUMMARY OF POSITION

ITAA is the principal trade association of the computer and software services industry. Its member companies provide the public with a wide variety of computer services, including local batch processing, software design and support, systems integration, and network-based information services. In delivering these computer services to their customers, ITAA's members depend on the nondiscriminatory availability of high quality and reasonably priced common carrier communications services.

1/ See Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, FCC 93-103 (released Feb. 19, 1993) [hereinafter "Notice"].

It is for this reason that ITAA has actively participated in each of the Commission proceedings that have addressed the regulatory treatment of dominant and nondominant carriers.[2]

II. THE COMMISSION HAS BROAD DISCRETION IN TAILORING THE TARIFF-FILING REQUIREMENTS OF SECTION 203 TO THE UNIQUE CIRCUMSTANCES OF INDIVIDUAL CARRIERS.

In its Notice, the Commission has correctly noted the very narrow holding of the D.C. Circuit's recent decision. Notwithstanding sweeping statements by some to the contrary, the Court only invalidated the Commission's permissive detariffing policy under which nondominant carriers were permitted to refrain from filing tariffs.[4] The Court left intact what are the most significant elements of the Commission's Competitive Carrier structure, namely the Commission's decision to draw distinctions between, and impose different levels of regulation upon, dominant and nondominant carriers.

As concerns the filing of tariffs, the Court said only that the Commission lacked the authority to relieve common carriers of the obligation to file tariffs altogether.[5] Significantly, the Court did not address whether the tariffs filed by dominant and nondominant carriers must be the same, nor when those tariffs must be filed, nor what they must state, nor how they should be reviewed. In short, the Court left the Commission with considerable discretion to frame the manner in which

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4/ See Notice at ¶ 6.

5/ See 978 F.2d at 736.

carriers are to comply with Section 203(a) of the Communications Act.[6]

The Commission, therefore, need not be concerned about whether it has discretion to vary the tariff-filing requirements of the Act, but rather how that discretion should be exercised. In doing so, the Commission should be guided by the public interest in the widespread availability of high quality, reasonably priced communications services. It should be less concerned about the claims of competitors regarding the alleged unfairness of asymmetrical tariff regulation. In this regard, the Commission should recognize that not all carriers need be subject to the same tariff-filing requirements.

At one end of the continuum are local exchange carriers ("LECs"). Although we are beginning to see the glimmerings of local exchange competition, these carriers still possess substantial market power. They are thus in a position to exploit their local monopoly and charge unjust and unreasonable rates. Full tariff regulation is therefore necessary to help protect users against such abuse.

At the other end of the continuum are resale carriers. Unlike the LECs, these carriers have no market

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6/ See Black Citizens for Fair Media v. FCC, 719 F.2d 407, 411 (D.C. Cir. 1983) ("FCC is generally given broad discretion" in implementing the Communications Act), cert. denied, 467 U.S. 1255 (1984).

power. Because they do not own transmission facilities and must acquire transmission capacity from other carriers, resellers simply do not have the ability to charge unjust or unreasonable rates or to engage in unreasonable discrimination.[7] As the Commission has previously concluded, "resellers lack the ability to raise their prices to unreasonable levels or engage in practices proscribed by the Act except at substantial risk of losing customers and profits."[8] There is thus no reason to impose upon these carriers the same tariff-filing requirements that are imposed upon the monopoly LECs.

Moreover, the Commission should recognize that imposing needless tariff regulation on nondominant interexchange carriers would have deleterious effects. Among other things, extensive tariff regulation would chill price competition, retard service innovation, delay market entry, and impede the ability of nondominant carriers to respond quickly to market trends.[9] In this regard, the Commission should be wary of arguments that nondominant interexchange carriers must file tariffs with the same

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7/ ITAA Reply Comments at 8.

8/ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, 91 F.C.C. 2d 59, 68 (1982)

9/ Notice at ¶ 12.

degree of detail as AT&T in order to comply with the Communications Act.

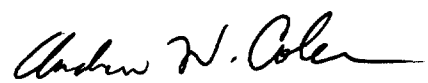
Such arguments are predicated on the erroneous notion that AT&T's tariffs provide users with the minimum information necessary to satisfy the tariff-filing requirements of the Act. In point of fact, the Commission could -- and, in the past ITAA has urged the Commission to -- reduce the tariff-filing burdens now imposed on AT&T, consistent with Section 203 of the Act. Thus, rather than saddling nondominant carriers with needless and burdensome tariff regulation, the Commission should consider relaxing the burdens it imposes on AT&T.

III. CONCLUSION

As set forth above, the Commission should conclude that it has the discretion to tailor the tariff-filing requirements of the Communication Act to the circumstances of individual carriers. The Commission should exercise that discretion in the public interest with due regard to a carrier's market power.

Respectfully submitted,

INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA



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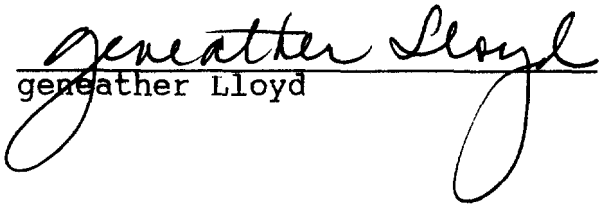
March 29, 1993

CERTIFICATE OF SERVICE

I, geneather Lloyd, hereby certify that copies of the foregoing Comments of the Information Technology Association of America were served by hand or by First-Class United States mail, postage prepaid, upon the parties appearing on the attached service list this 29th day of March, 1993.



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CC Docket No. 93-36 Service List

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